

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:5:STP:GL-126760-02

HHKeuning

date: July 8, 2002

to: Bruce Falink, Area 9 CQMS Task Force
Jin Homewood, Group Manager, Fargo ND
Kathleen Kelm, Technical Support Group Manager

from: Associate Area Counsel (SB/SE), St. Paul, MN

subject: **Request for Counsel Opinion**

Re: Revenue Officers Requests for Corporate Taxpayer Information

BACKGROUND FACTS

Your request for opinion stated that it is common for a revenue officer (R.O.) to need additional information from a particular taxpayer before the R.O. can make a collection determination. Thus, the R.O. will often issue a written or oral request to the taxpayer for the required information. The R.O. will generally give the taxpayer a deadline for complying with the request as well as a description of the collection activities that will be pursued if the deadline is not met. In your memorandum, you characterized the request for information as a "contract" or an agreement between the Service and the taxpayer since the R.O. and a representative from the corporation meet to negotiate deadlines for the submission of information.

Your request for opinion also pointed out that a R.O. may deal with many different types of corporations, ranging anywhere from a small business to a large, multinational corporation. In each of these cases, the R.O. must determine to whom the request for information should be delivered. You had two particular concerns. First, in the case of a large corporation, the R.O. would not have the opportunity to give a request for information (and corresponding deadline) personally to either a high level corporate officer or someone on the Board of Directors. Second, where LMSB is already on location doing an examination of the same corporation, you wondered if it would be possible for the R.O. to deal with the same person that the corporation designated for LMSB examination purposes.

QUESTIONS PRESENTED & BRIEF ANSWER

The two questions stated below appear exactly as you presented them in your request for opinion. Below each question is a brief answer. Please read the analysis section for a more detailed account of how we arrived at our conclusion.

- 1) *Considering the sizes and complexity of corporations, to whom can a revenue officer give deadlines and consequences?*

The request for information issued by the revenue officer is not a contract. The revenue officer can issue a request for information (along with the stated deadlines and consequences) to anyone who is designated in writing to be the corporation's representative (through a POA, such as Form 2848) or contact person for purposes of collection in accordance with I.R.C. Section 6103 and the specific guidance given in the attached Chief Counsel Advice memorandum issued by David L. Fish. See CCA 200133041; 2001 TNT 161-18-IRS Legal Memorandums.

- 2) *Can a revenue officer ask for an authorization to represent the corporation for collection matters and give that person a deadline, if that person is listed as a representative for examination matters?*

When a revenue officer discovers that a corporation has already listed a person (or several people) as its authorized representative for purposes of examination, the revenue officer can ask the corporation to designate the same person (or persons) as its authorized representative for collection matters either through a valid written or oral consent. However, the revenue officer should not assume that just because a person is listed as a representative for examination matters, he or she is automatically authorized to receive disclosures or represent the corporation for collection matters.

ANALYSIS

A. The R.O.'s Request for Information is Not a Contract

The entire premise of your request for opinion is that the R.O.'s written or oral request for information is contractual in nature. This is a false premise. The R.O. and the corporation (or the corporate representative) never enter into an agreement that imposes specific obligations on both parties. Rather, the R.O.'s request for information is more like a demand letter that unilaterally outlines the information that the corporation must submit, the deadline set for the corporation, and the consequences that will result if the deadline is not met. The demand letter is intended to give the corporation appropriate notice of the collection activities permitted by the Internal Revenue Code that the Service will commence if the corporation does not produce the necessary information on time.

The real question then, is not who has the authority to bind the corporation to an agreement, but who should be given notice that the R.O. has requested information and will begin collection activities if the information is not timely produced. The question of who should be given notice, in turn, directly implicates the disclosure issues discussed in IRC Sec. 6103, the memorandum written by David L. Fish, and IRM 1.3.2.4.3.

B. To Whom Should the Revenue Officer Give Notice?

1. The Corporation or its Designated Contact Person(s)

Assuming that the R.O. does not know who the corporation has designated to be a contact person for purposes of collection, the first step the R.O. should take is to ask the corporation to make a designation. The R.O. can issue an initial written request addressed to the president, chief executive officer, board of directors, or any other corporate officer authorized to legally bind the corporation. See IRM 1.3.2.4.3(1). The written request should be addressed to the corporation and directed specifically at a particular person (e.g., XYZ Corporation, Attention: Mr. Bob Smith, President & CEO). If the R.O. does not know the name of the individuals, then the letter can be addressed to the generic position or title (e.g., XYZ Corporation, Attention: President & CEO.)

As a last resort, the R.O. can address the initial written request to the corporation itself at the corporate address of record. A corporation is a legal entity that is treated, in effect, as an artificial "person" created under state law. As

such, a corporation can be dealt with separate and distinct from its owners, employees, and officers. For example, a summons or a subpoena can be served directly upon a corporation and it then becomes the corporation's responsibility to designate the individuals who will represent the corporation and fulfill its legal obligations. Thus, IRM 1.3.2.4.3(1)(b) provides that if there is a question regarding the identity of the person who may receive returns or return information, the IRS employee should "mail the requested returns or return information to the corporate address of record."

Regardless of the addressee, the R.O., in his or her initial written request to the corporation, should include the following items:

- a) General notice of the collection activity that is or may be directed against the corporate taxpayer;
- b) Description of the R.O.'s official duties to establish or verify the financial status or condition of the corporate taxpayer, to locate assets in which the corporate taxpayer has an interest, and to apply the provisions of the Internal Revenue Code relating to establishment of liens against such assets, or levy on or seizure, or sale of, the assets to satisfy any applicable federal tax liability;
- c) A request for either of the following:
 - (i) *Designation of Contact Person(s) in the Corporation for Purposes of Collection.*

It is often efficient for the R.O. to work with one contact person within the corporation who can gather the necessary information and produce those documents by a particular deadline. As such, the R.O. should simply request in its initial letter that the corporation itself designate the contact person or persons with whom the R.O. can meet when the R.O. makes a field call to the corporation. The corporation could formally make such a designation in two ways:

#1 -- The corporation could designate a contact person by properly executing a Power of Attorney (POA) that gives a particular corporate employee the authority to act on behalf of the corporation for purposes of the

collection activities pursued by the R.O.

#2 -- The corporation could also give a general purpose consent for a contact person to work with and supply information to the R.O. for collection purposes. In accordance with Treas. Reg. Sec. 301.6103(c)-1T(b) and the guidance provided by Mr. David Fish's memorandum, the corporation's designation of a contact person should:

- be presented in a separate written document (such as one side of an 8 ½" by 11" piece of paper;
- contain a general purpose consent that authorizes the R.O. to disclose corporate taxpayer information to the designated contact person(s);
- state the identity of the taxpayer;
- state the identity of the designated contact person(s);
- state the tax year(s) at issue;
- the type of tax or items of tax information to be disclosed; and
- be executed by a high level corporate officer or a board of director member who has the authority to legally bind the corporation. See attached Form 8821.

In addition to the disclosure requirements above, the R.O. may also want the corporation to state explicitly in its general consent form that the designated contact person is someone:

- who has personal knowledge regarding or who can establish and verify the financial status or condition and location of the corporate taxpayers assets and liabilities;
- who has the ability on behalf of the corporation to assist the R.O. in the performance of his or her official functions;
- who can collect and supply the R.O. with the necessary corporate information;

- who is available to arrange field calls and meet with the R.O. in person; and
- who has the authority to negotiate deadlines and collection consequences on behalf of the corporation.

Finally, the R.O. should conclude the initial request for designation of a contact person by giving a specific deadline for the corporation to provide either a properly executed POA or a general consent that meets the requirements described above. Once the R.O. receives the POA or general consent, the R.O. will know exactly who the corporation has designated as its contact person. That way, the R.O. can meet with, work with, request information from, and negotiate deadlines with the contact person that the corporation itself has designated.

Even in negotiating deadlines and discussing potential consequences with the designated contact person, the R.O. is not entering into a contract or agreement with the corporation. Rather, the R.O. is giving appropriate notice to the corporation of the information needed, the deadlines, and the resulting consequences through his or her statements to the designated contact person. Thus, the contact person does not necessarily have to be someone who can legally bind the corporation to a contract or settlement. Instead, the contact person need only be someone who is authorized both to receive disclosures concerning the corporate taxpayer under Section 6103 and to represent the corporation in its dealings with the R.O. over collection matters.

(ii) Production of Specific Information that is needed for Purposes of Collection.

It is possible that the corporation will not respond to the R.O.'s initial request for a designated contact person by the deadline given. It is also possible that the R.O. may not need to meet with or directly contact any person within a corporation, but rather, requires only a list of specific information to be supplied by the corporation. In either of these situations, the R.O. should make a written request for production of information that is addressed directly to the

president, chief executive officer, board of directors, or any other corporate officer authorized to legally bind the corporation.

The request for production of information should:

- state in detail the information that is being sought,
- set a specific deadline for producing the information to the R.O.,
- describe the collection consequences that will result if the corporation fails to meet the deadline, and
- ask for the name and number of a contact person within the corporation with whom the R.O. can follow up if the information provided is unclear or incomplete.

Again, such a request for production of information by the corporation is not a contract between the Service and the corporation. Rather, it is the Service giving the corporate entity appropriate notice of the information that the R.O. needs to perform his or her official duties and notice of the actions that the Service is legally authorized and willing to take if the corporation is uncooperative or unresponsive.

2. The Corporation's Representative for Examination

As your request for opinion indicated, there may be times when a R.O. discovers that a particular corporation is currently being audited by the Service's LMSB group. If so, the corporation has already designated the corporate employee(s) who will work with the Service during the audit through executing a POA, general consent, or an audit plan. The R.O. should not automatically assume that the person listed as a representative for examination matters can also be a representative for collection matters.

For example, the examination representative may only be authorized (on the POA or general consent) to receive disclosures and to represent the corporate taxpayer with regard to the 2000-2002 tax years, but the R.O. is pursuing collection activities based on the 1998 tax year. In another instance, the examination representative may only be authorized to receive disclosures and to represent the corporate taxpayer with regard to its income tax

issues, but the R.O. is pursuing collection activities based on the corporation's employment taxes. In both of these examples, the R.O. should not contact the examination representative directly because the representative is not authorized to receive the disclosures the R.O. wants to make regarding the tax years or types of taxes involved in the collection. Furthermore, the examination representative cannot expand the POA or general consent executed by the corporation. In other words, the examination representative cannot grant himself or herself the authority to represent the corporation for purposes of collection. Only the corporation can expand the examination representative's scope of representation or authority to deal with the Service.

Instead of immediately contacting the examination representative directly, the R.O. should make an initial written request to the president, chief executive officer, board of directors, or any other corporate officer authorized to legally bind the corporation, stating the following:

- a) General notice of the collection activity that is or may be directed against the corporate taxpayer;
- b) Description of the R.O.'s official duties to establish or verify the financial status or condition of the corporate taxpayer, to locate assets in which the corporate taxpayer has an interest, and to apply the provisions of the Internal Revenue Code relating to establishment of liens against such assets, or levy on or seizure, or sale of, the assets to satisfy any applicable federal tax liability; and
- c) A request that the examination representative(s) that are already working with the Service for audit purposes (or some other designated contact person(s)) be authorized to receive disclosures and to represent the corporation for collection matters. Such a request can be fulfilled by the corporation through an executed POA or a general purpose consent as described above. In addition, the corporation could also make either a valid written or nonwritten consent under Treas. Reg. Sec. 301.6103-1T(c) through the following:
 - (i) a writing that is signed and dated by a high level official with authority to execute a consent that contains the taxpayer's identity, the identity of the designee, and a statement that the designee is authorized to receive corporate taxpayer information and to represent the

corporate taxpayer in connection with the collection activities of the R.O.; or

(ii) an oral statement from a high level official of the corporation with authority to execute a consent that tells the R.O. explicitly who the corporation has designated as the contact person for purposes of collection. For example, the president of the corporation may tell the R.O. that the contact person for purposes of collection is the same examination representative(s) currently working with the Service. [NOTE: The R.O. should immediately record the date, the name and title of the official of the corporation making the oral request, and the specifics of the request. If there are any ambiguities in the statements made or in the circumstances, the R.O. should follow-up with the official and resolve them. See *David L. Fish's Memorandum*.]

CONCLUSION

The analysis and brief answers contained in this opinion basically restate the guidelines issued by David L. Fish in his Chief Counsel Memorandum. As your request for opinion recognized, Mr. Fish's guidelines concern the individuals in a corporation who are authorized to receive disclosures from and to deal with the Service. Your request, however, indicated that you did not believe these guidelines were as applicable to the situations faced by the R.O. This opinion attempts to explain why the disclosure guidelines are entirely applicable and then to apply the disclosure guidelines to the R.O. scenarios described in your request.

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We appreciate the opportunity to provide you with our opinion on this matter. We hope that the suggestions provided will allow the revenue officers to request information from and deliver deadlines to the appropriate designated contact person(s) within a corporation and to process their caseload efficiently.

Please do not hesitate to contact our office or the undersigned attorney at (651) 290-3473, ext. (b)(6) if you have any questions or concerns regarding this opinion. Also, feel free to let us know how we can be of assistance on this or any other legal matter.

GERALD W. LELAND
Associate Area Counsel
(Small Business/Self-Employed)

/s/ Helen H. Keuning

By: _____
HELEN H. KEUNING
Attorney
Galtier Plaza, Suite 650
380 Jackson Street
St. Paul, Minnesota 55101
Telephone: (651) 290-3473, (b)(6)

Attachment: Chief Counsel Advice Memorandum by David L. Fish

HHC
7/8/02

Leland
7/8/02